



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
JOSEPH B. HOAGE

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

March 29, 2012

Ms. Sarah A. Seaton
1122 E. Walnut Street
Boonville, Indiana 47601

*Re: Formal Complaint 12-FC-58; Alleged Violations of the Open Door Law by
the Boonville City Council*

Dear Ms. Seaton:

This advisory opinion is in response to your formal complaint alleging the Boonville City Council ("Council") violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et seq.* Our office forwarded a copy of your formal complaint to the Council. As of today's date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you provide that the regular January Council meeting was scheduled for January 5, 2012 per City policy. When the public arrived for the meeting, there was a notice that the meeting was cancelled as it had already been held on Sunday, January 1, 2012. You allege that the Council did not provide notice to the January 1, 2012 meeting. The Boonville City website indicated that City Hall is closed on all national holidays, including New Year's Day. You further allege that this was the third meeting in a five-month period that was cancelled, held early, or otherwise inaccessible to the public. With your formal complaint, you provided information from the City's website indicating the Council's meeting dates and times.

ANALYSIS

It is the intent of the ODL that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. *See* I.C. § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* I.C. § 5-14-1.5-3(a).

The ODL requires that public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least

forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. *See* I.C. § 5-14-1.5-5(a). The notice must be posted at the principal office of the agency, or if no such office exists, at the place where the meeting is held. *See* IC § 5-14-1.5-5(b)(1). While the governing body is required to provide notice to news media who have requested notices nothing requires the governing body to publish the notice in a newspaper. *See* I.C. § 5-14-1.5-5(b)(2). A meeting is a gathering of a majority of the governing body of a public agency for the purpose of taking official action on public business. *See* I.C. § 5-14-1.5-2(c). “Official action” means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. *See* I.C. § 5-14-1.5-2(d). “Public business” means any function upon which the public agency is empowered or authorized to take official action.

The Council is required to provide forty-eight hours notice (excluding weekends and legal holidays) of any meeting held by posting notice of the time, date, and place of the meeting at the Council’s principal offices or if no such office exists, at the place where the meeting is held. To the extent that the Council failed to provide proper notice of the January 1, 2012 meeting, it is my opinion that it violated the ODL. I would note that, “nothing in the ODL prohibits an agency from cancelling a scheduled meeting, even a few minutes after the scheduled start time.” *See Opinions of the Public Access Counselor 07-FC-331; 09-FC-249; and 09-FC-250.* Thus while the ODL does not prohibit a governing body of a public agency from cancelling a meeting, it would still be bound by the notice requirements of I.C. § 5-14-1.5-5 for each and every subsequent meeting that it held.

CONCLUSION

Based on the foregoing, it is my opinion that if the Council held a meeting that did not comply with the notice requirements of I.C. § 5-14-1.5-5, it violated the ODL.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Boonville City Council